Comments on Interstate Pay-Per-Call and Other Information Services
CC Docket No. 96-146

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GENERAL COMMENTS
The Pay-Per-Call Rule is named the Telephone Disclosure and Dispute Resolution Act (TDDRA) of 1992. To date, the FCC and FTC have firmly defined and enforced the disclosure requirements of this act. The FCC and the FTC have defined and enforced a caller to information services (via 800, 900 or international dialing) rights to dispute any and all charges billed against that caller or the owner of the number to which the information service was charged. Unfortunately, the FCC has not defined the information service providers' rights to a resolution of the disputes. Currently the enforcement of TDDRA permits customers who have been billed for information services the right to have the charges adjusted from their bills even if the information services were provided to the customers' telephone number.

In an October 30, 1998 call for rulemaking on revising TDDRA that was published in the Federal Register, Section A, paragraph 1 states the following. "Congress enacted the Telephone Disclosure and Dispute Resolution Act of 1992 ("TDDRA"). 15 U.S.C. 5701 et seq., to curtail the unfair and deceptive practices engaged in by some pay-per-call businesses and to encourage the growth of the legitimate pay-per-call industry." As noted above, the FCC and FTC have definitely curtailed the unfair and deceptive practices of the pay-per-call business. Unfortunately, the FCC and FTC have done nothing positive to encourage the growth of the legitimate pay-per-call industry. In fact, both agencies, separately and together, have done all in their powers to ruin the pay-per-call industry. As proof, note that the chargebacks for most 900 services range from 60 % to 95%. No industry can survive in such a financially irregular environment

The enforcement of TDDRA has caused notices to be sent to telephone consumers notifying them that they can dispute any and all pay-per-call services. TDDRA enforcement has permitted LEC's to include the total value of the revenue of pay-per-call services billed to consumers and businesses in their financials as well as claiming the revenue from billing and collection charges billed to common carriers and billing consolidators for providing such services. LEC's are not entitled to any of the revenues from pay-per-call services billed to consumers as that revenue is due to common carriers, billing consolidators or common carriers. LEC's currently are free to adjust all of a customer's pay-per-call billings without any attempt to determine if such billings are legitimate.

In enforcing TDDRA, the FCC has forgotten to protect the businesses providing pay-per-call services. There is a quite different situation in the United Kingdom (UK) where Oftel and ICTIS combined in the mid-1990's to legitimize the pay-per-call industry. Oftel required that all pay-per-call calls be recorded by the information providers with the ability to identify each individual call by date, time, called number and customer line identifier (CLI; ANI to the US). When a customer disputed a pay-per-call charge, the LEC first determined via its network records if the call actually occurred. If it had occurred, the customer was required to schedule a visit to a LEC billing representative to listen to the recording of the call so that the consumer could identify the voice on the call. A high percentage of consumers refused the opportunity to listen to the tape and simply agreed to pay the bill. Of consumers who did schedule a visit, almost all were able to identify the voice as themselves, their spouse, a child, a relative or an employee. At the end of the trail period, almost none of the charges were adjusted. Consumers learned in a positive fashion that they were responsible for charges of any type incurred on telephone numbers issued to them. The cost of this project was paid for by the service bureaus who leased the pay-per-call number from a carrier via a fee accessed for each minute of pay-per-call service transported. The success of this project can be shown by the fact that Oftel has ordered the primary UK LEC to reduce its withholding for pay-per-call bad debt to 2 % from 4 ½ % retroactive to late 2002. There is now a legitimate and profitable pay-per-call industry in the UK that pays income taxes and other telecom fees to the government on its profits. It is so sad that the nation that leads the world in the provision of telecom services cannot do the same.

900 NUMBER REGULATION

Since the mid-1990's, telecom technology has permitted billing representatives at LEC's to view network records while on-line with consumers. When a consumer calls to inquire about pay-per-call services the billing representative can call up network records to determine if a 900 call was actually made from the consumers' telephone number. In the case of a 900 number, a billing representative can clearly detect if the call was actually made at the time billed. Unfortunately, the LEC's have trained their billing representatives to immediately adjust any customer's 900 charges without determining if a call actually occurred. The LEC's also have additional information to use in investigating the dispute. When a 900 billing agreement is signed with a LEC, the LEC requires that each 900 number to be billed be identified with a toll free number or postal address for customer service and the name of the service bureau providing the service. Failure to investigate 900 charges disputes appears to make the LEC's accessories in the thefts of services due to information provider when the 900 calls actually occurred but were adjusted without investigation by the LEC representative. Many 900 charges are adjusted by the LEC's for "goodwill" purposes even when the customer admits incurring the charges.

Pay-per-call service charges have never been tariffed and collection of such service charges have therefore have never been protected by the "Filed Rate Doctrine" (note: AT&T tariffed its 900 transport charges; no other carrier tariffed 900 transport charges; no carrier tariffed 900 billing and collection charges). Currently, in the detariffed environment, carriers contract with pre-subscribed consumers for intra-state, interstate, international and some miscellaneous services and therefore collection of such services are regulated by the Uniform Commercial Code and additional state laws. Dial-around and certain other newly order services are still protected by the "Filed Rate Doctrine". Although TDDRA was supposed to be the Act that protected pay-per call service providers' right to collect for their services, its enforcement has caused such providers to have no rights to collect for their legally provided services.

If the FCC followed the UK model described above, all 900 voice calls could be taped and made available for LEC representatives to play for consumers. Today, transmittal of the recordings could be done via the internet with little additional billing representative work time involved. For data calls to 900 numbers, the information provider can detect the network address of the device making the call, the IP providing internet access and many times the e-mail address of the consumer making the call. All of this information can be recorded and provided to the LEC to discuss with the consumer. A fund would be set up so that LEC's could recover valid charges for the increased time spent in collecting presubscribed charges.

In a pre-subscribed contract environment, carriers' contracts require that a consumer be responsible for all calls made from the telephone number used in the carrier contract. It seems indefensible for the FCC to permit consumers to disavow responsibility for 900 calls made from their telephone numbers.

PRESUBSCRIPTION OR COMPARABLE ARRANGEMENT

With such a poor outlook for business success on 900 service, many information providers, both legitimate and scam, moved to toll free services in hopes of reasonable (legitimate) or lax (scam) treatment from regulators. Enforcement of TDDRA's provisions relating to pay-per-call services via toll free services has been strict but there are still loop holes that have allowed scams to continue.

One can access a toll free number from any telephone number so relating the occurrence of a toll free call to a miscellaneous charge is not productive in how a LEC resolves a billing dispute on such a charge. A LEC cannot access the event of a customer signing a presubscription agreement in person or via the internet. In spite of this inability by a LEC to track these transactions via network reports, the LEC still has information to investigate the dispute. When a miscellaneous billing agreement is signed with a LEC, the LEC requires that each miscellaneous charge to be billed be identified with a toll free number or postal address for customer service and the name of the service bureau providing the service. Failure to investigate miscellaneous charges disputes appears to make the LEC's accessories in the thefts of services due to information provider when the miscellaneous charges actually were incurred appropriately but were adjusted without investigation by the LEC representative. Many miscellaneous charges are adjusted for "goodwill" purposes even when the customer admits incurring the charges.

Rather than eliminating telephone bills as a billing option for pre-subscribed services, the FCC can define other regulatory controls. Current technology provides options that should be looked at as a means to remove opportunities for scammers. The FCC could require providers of presubscribed services via toll free numbers to have the calls monitored by a Third Party Verification company just as is done for PIC changes. The same processed used for PIC verification can be used for presubscribed services via toll free numbers. This could easily be paid for by the information providers from the increased collection of its revenues. Another option is to have the calls to toll free numbers selling presubscribed services taped and available to be played by a billing representative in charge of pay-per-call disputes. Again this could be easily paid for by the increase in revenues collected through a fee per transaction. A fund would be set up so that LEC's could recover valid charges for the increased time spent in collecting presubscribed charges.

Customer presubscriptions entered into via paperwork could be required to be scanned in and placed on a customer service web site to be accessed by LEC billing representatives and consumers. In this way, the consumer and the LEC representative could both see the signature. Again this could be easily paid for by the increase in revenues collected through a fee per transaction. A fund would be set up so that LEC's could recover valid charges for the increased time spent in collecting presubscribed charges.

COLLECTION OF 900 OR PRESUBSCRIBED CHARGES

The LEC's pass through of their own "goodwill" adjustments to common carriers, billing clearinghouses and information providers is a violation of Generally Accepted Accounting Practices (GAAP). "Goodwill" adjustments, by definition, are valid charges that a business chooses to adjust to maintain customer "goodwill". "Goodwill" adjustments are to be processed as contra-revenue and not as an expense. In defiance of GAAP, the LEC's are unfairly claiming all revenues from pay-per-call services billed to consumers, processing "goodwill" adjustments as expenses rather than contra-revenue and inflating their revenue streams and expenses.

Today, the LEC's completely control the collection of 900 and presubscribed service revenue when such charges are billed on their bills. As none of the caller revenues on such calls belong to the LEC's, this seems to violate GAAP. The LEC's collect their revenues for providing billing and collection services by directly billing carriers, billing consolidators or service bureaus. Appropriately, these revenues belong to the LEC's and should be rolled up into the LEC's financial statements. These two financial transactions should not be related except to allow the LEC's to use the consumer billed revenue from 900 or presubscribed services to protect its interest in collecting their billing and collection charges. 900 and presubscribed service charges should not appear on a LEC bill included in total charges owed to the LEC's, Each separate 900 or presubscribed service provider should have its own section within the LEC bills as do long distance carriers. The LEC's should be prevented from adjusting these charges for any reason. If a LEC representative chose to do a "goodwill" adjustment, that adjustment should be passed to a carrier, billing consolidator or service bureau as a credit against billing and collection charges owed to the LEC by such. In this way the LEC's would have no incentive to adjust away valid 900 or presubscribed consumer charges.

REDEFINITION OF PAY-PER-CALL TO REMOVE THE TARIFFED SERVICE EXEMPTION

The FCC's proposal to prohibit information services being sold via "tariffed services" is both obsolete and in direct opposition to Universal International Premium Rate Service

(UIPRS) as defined by the ITU in a resolution sponsored by the US Government via the Commerce Department.

First, as noted above all formerly tariffed services except for dial around calls and newly ordered services have been detariffed. Telecommunication services have been determined by the FCC to be fully competitive with rates being set by market forces. When rates are set by market forces, there is no relation between the rate charged per minute and the cost of transmitting that call. Today, most all carriers have a variety of rates depending on the usage of the consumers. Interstate calls for infrequent users on a basic plan may be $0.30 per minute with a minimum billing amount of $3.00. In this case a caller making 1 call for 3 minutes is paying $1.00 per minute. With the demise of the accounting rate system, one would think that international call charges would relate to the cost of providing such calls; not true. Today, carriers can charge $12.00 per minute for calls made to a very small country by a user on the basic plan. The same call to the same small country for a frequent caller will be about $1.00 per minute. For both these calls, the actual cost of providing the call may be as little as $0.01 per minute if VOIP transport is used or $3.00 per minute if an overflow transit carrier is used. In neither of these cases does the rate charged to the consumer have any relationship to the carrier's cost of transmitting the call.

The cost of a dial around call to a consumer has even a worse relationship to the carrier's cost of transmitting the call as carriers who permit dial around calling generally charge a transaction fee per message that varies from $0.25 for interstate calls to $2.50 for international calls after billing the highest per minute charge for the call.

Secondly, the US Commerce Department-led US delegation to the ITU was one of the three sponsors (with the UK and Japan) of UIPRS. UIPRS is a non-geographic country code, 979, designed to permit worldwide premium rate service offerings via direct-dialed PSTN calls between countries. The ITU has 3 recommendations related to UIPRS. Recommendation E.155 defines UIPRS. In the definition of UIPRS the ITU specifically states that the cost to the consumer includes the cost of transmitting the call plus the cost of the information service offered (premium content) via the 979 number. Recommendation D.117 defines the charging and accounting principles for UIPRS. E.169.2 defines the numbering plan for UIPRS. UIPRS is designed to be accessed by consumers calling an international access code (011 in the US) then 979 plus a billing digit plus a 7 digit premium number. Based on the definition of UIPRS, a single 979 number could terminate in any country in the world.

Any attempt by the FCC to change TDDRA to force all information services call charges to consumers to relate to the cost of transmitting the call would question the ability of a carrier to charge varying rates per minutes to callers based on their volume of usage or presubscribed plan. When a telecom network carries a call, the network cannot immediately detect if the call is voice or data. It is illegal for the network owner to determine the content of the call without a court order. Therefore information service content delivered via local, interstate or international voice or data calls cannot be separated from similar calls without illegal wiretapping.

COMPLIANCE WITH FCC REGULATIONS VERSUS IMPOSSIBLE TASK

AT&T successfully defended itself against fines ordered by the FCC for slamming even though AT&T had followed all of the FCC's regulations as noted below. The following information was provided by AT&T's law firm, Sidley Austin Brown & Wood, in a press release.

In a ruling handed down on April 8, the U.S. Court of Appeals for the District of Columbia held that part of the FCC's so-called anti-slamming regulations exceed the Commission's authority by requiring carriers to guarantee that the person authorizing a change of service is the actual customer. The court also recognized that federal law requires only that carriers get "verification" through an independent third-party of a customer's decision to switch.

The case stemmed from an FCC ruling issued in 2001, which found AT&T liable for 11 incidents of slamming and levied fines totaling $520,000. AT&T opposed the sanctions in two of the cases, which accounted for $80,000 worth of fines. The company argued that it had complied with FCC rules that require "independent third-party verification" that the customers had ordered a change in long-distance services.

"This a gratifying win because AT&T did nothing wrong," said Sidley litigation and appellate partner Daniel Meron, who argued the case on behalf of AT&T. "Indeed, AT&T has a 'zero tolerance' policy toward slamming. AT&T fully complied with the FCC's verification procedures, and therefore the court rendered the right decision."

To prevent telecommunications carriers from making unauthorized changes to subscribers' telephone service, Congress adopted a provision as part of the Telecommunications Act of 1996, making it unlawful for telecom carriers to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with verification procedures set forth in the Act. The FCC's regulations, however, made long distance carriers liable for obtaining the customer's actual authorization, regardless of their compliance with the verification procedures.

The Appeals Court ruled that FCC regulations "go beyond the anti-slamming statute's express term." The Court said the Commission's authorization requirement gives carriers "a virtually impossible task: guaranteeing that the person who answers the telephone is in fact authorized to make changes to that telephone line."

If one follows the above court's ruling, one can see that it does not expect telecom businesses to perform impossible tasks over and beyond what the FCC has defined in its regulation. Clearly the court believes that consumers bear a responsibility to control the users of their telephone numbers.

It would be reasonable to assume that a court would rule in the same fashion to assure that information providers have the right to collect revenues legally owed to them when they follow all of the FCC's regulations.

CONCLUSION

The FCC has the ability to revise TDDRA so that it protects consumers while permitting a vital and thriving pay-per-call industry which would contribute to the US economy. One wonders if it has the will.